

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #16	CCRB Case #: 201707932	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 09/23/2017 12:20 AM	Location of Incident: Beach Channel Drive and Nameoke Avenue	Precinct: 101	18 Mo. SOL 3/23/2019	EO SOL 3/23/2019	
Date/Time CV Reported Tue, 09/26/2017 5:29 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 09/26/2017 3:34 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Mccarthy	19917	950855	101 PCT
2. POM John Hansen	24182	943348	101 PCT
3. POM Frank Orourke	12745	954196	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Orourke	Force: Police Officer Frank Orourke used physical force against § 87(2)(b)	
B.POM Frank Orourke	Abuse: Police Officer Frank Orourke refused to provide his name and shield number to § 87(2)(b)	
C.POM John Hansen	Abuse: Police Officer John Hansen refused to provide his name and shield number to § 87(2)(b)	
D.POM Michael Mccarthy	Abuse: Police Officer Michael Mccarthy refused to provide his name and shield number to § 87(2)(b)	
E.POM Michael Mccarthy	Discourtesy: Police Officer Michael Mccarthy acted discourteously toward § 87(2)(b)	

### Case Summary

On September 26, 2017, § 87(2)(b) filed this complaint in person with the CCRB.

On September 23, 2017, at approximately 12:20 a.m., in the vicinity of Beach Channel Drive and Nameoke Avenue in Queens, PO Frank ORourke allegedly pulled § 87(2)(b) by his waistband and pushed him up against a vehicle (**Allegation A: Force**, § 87(2)(g) PO ORourke, PO Michael McCarthy, and PO John Hansen allegedly refused to provide their names and shield numbers to § 87(2)(b) (**Allegations B, Allegation C and Allegation D: Abuse of Authority**, § 87(2)(g) PO McCarthy allegedly threw two summonses at § 87(2)(b) (**Allegation E: Discourtesy**, § 87(2)(g) This case has no video evidence.

### Findings and Recommendations

#### **Allegation A – Force: Police Officer Frank Orourke used physical force against § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) stated in his verified interview that on September 23, 2017, at approximately 12:20 a.m., he was driving home from work when he was pulled over by three officers in plainclothes driving an unmarked, black Ford Taurus (Board Review 01). § 87(2)(b) was on the phone with his friend, § 87(2)(b) during the interaction via a Bluetooth headset. Three officers exited the vehicle and positioned themselves at § 87(2)(b)'s front driver side, rear driver side, and front passenger side windows, respectively. The officer at § 87(2)(b)'s driver side window asked for § 87(2)(b)'s license and registration, which he provided. The officer asked § 87(2)(b) where he was coming from, to which § 87(2)(b) did not provide an answer. The officer repeated his question, to which § 87(2)(b) replied, "Officer, I have the right to remain silent." The officer then told § 87(2)(b) to step out of his vehicle. When § 87(2)(b) exited his vehicle, the officer grabbed § 87(2)(b) by his waistband and dragged him to the back of the car. The officer then pushed § 87(2)(b) against his vehicle three times in succession using the hand with which he was holding § 87(2)(b)'s waistband. § 87(2)(b) stated that he received injuries to his neck, shoulder and lower back as a result of this force.

§ 87(2)(b) provided the CCRB with a written statement regarding this incident that he generated immediately after he arrived at home following the incident (Board Review 07). § 87(2)(b)'s statement was generally consistent with his CCRB testimony, although § 87(2)(b) only stated he was pushed once as opposed to three successive times.

§ 87(2)(b)'s medical records show that on § 87(2)(b), § 87(2)(b) was admitted to the emergency room at § 87(2)(b), where he was diagnosed with upper, mid, and lower back strain, as well as low back pain (Board Review 13). § 87(2)(b) was prescribed Ibuprofen (Motrin), an analgesic, and Cyclobenzaprine (Flexeril), a muscle relaxant. § 87(2)(b) returned for a follow up appointment on § 87(2)(b) regarding neck pain, low back pain, and an upper respiratory infection. § 87(2)(b) received x-rays on this date.

PO ORourke stated that on the date of incident, he was assigned to Anti-Crime and was working with PO McCarthy and PO Hansen (Board Review 04). PO McCarthy observed § 87(2)(b)'s vehicle driving on Beach Channel Drive and stated that it had extremely dark tints. After pulling

over § 87(2)(b)'s vehicle, PO ORourke approached § 87(2)(b)'s driver side window, while PO McCarthy stood behind him and PO Hansen stood on the front passenger side. PO ORourke asked § 87(2)(b) multiple times to provide his license, insurance and registration, to which § 87(2)(b) replied by repeatedly asking why he had been pulled over. PO ORourke informed § 87(2)(b) that he had been pulled over because of his tinted windows. PO ORourke then observed that § 87(2)(b)'s vehicle was not in park. PO ORourke asked § 87(2)(b) multiple times to put his car in park. Out of concern for his and his fellow officers' safety, PO ORourke asked § 87(2)(b) to step out of his vehicle. PO ORourke then moved § 87(2)(b) to the rear of his vehicle by stating, "Sir, come this way." § 87(2)(b) complied with this request. PO ORourke denied touching § 87(2)(b) and stated that to his knowledge no other officer made contact with § 87(2)(b). PO ORourke later stated that an officer may have touched § 87(2)(b) in the course of moving him to the rear of his vehicle, but did not recall anything specific. PO ORourke stated that no officer grabbed § 87(2)(b) by the waistband and pushed him against his vehicle.

PO McCarthy's CCRB statement was generally consistent with PO ORourke's (Board Review 03). However, PO McCarthy could not recall any details of the conversation with § 87(2)(b) while he was inside his vehicle aside from his repeated refusals to comply with officers' instructions. PO McCarthy could not recall who asked § 87(2)(b) to exit his vehicle, the circumstances under which § 87(2)(b) exited his vehicle, or whether § 87(2)(b) was ever moved from his driver side door to another position around his vehicle. PO McCarthy did not observe PO ORourke making physical contact with § 87(2)(b). PO McCarthy was standing approximately a foot away from PO ORourke and had nothing obstructing his view of the interaction. PO McCarthy stated that at no point in the interaction did an officer use physical force against § 87(2)(b).

PO Hansen's statement was generally consistent with the other officers' (Board Review 05). PO Hansen stated that both PO ORourke and PO McCarthy were issuing instructions to § 87(2)(b) while he was inside his vehicle, though PO Hansen could not hear § 87(2)(b)'s responses to these instructions due to the noise of street traffic. PO Hansen stated that both PO ORourke and PO McCarthy asked § 87(2)(b) to step out of his vehicle, that § 87(2)(b) stepped out of his vehicle voluntarily, and that the officers and § 87(2)(b) all walked to the rear of the vehicle while all maintaining a proximity of one or two feet from each other. PO Hansen did not observe any officer touching § 87(2)(b) reaching his hand inside § 87(2)(b)'s waistband, pulling § 87(2)(b) to the back of his vehicle, or pushing him against his car.

§ 87(2)(b)'s sworn statement to the CCRB was not generally consistent with either the account of § 87(2)(b) or the officers, and was not consistent internally (Board Review 06). § 87(2)(b) stated that he heard § 87(2)(b) tell the officers that he was coming from work, and denied that § 87(2)(b) ever stated, "I have the right to remain silent." § 87(2)(b) also gave conflicting statements about whether § 87(2)(b) provided his driver license to the officers before or after he exited his vehicle. § 87(2)(b) stated that the officers pulled § 87(2)(b) out of his car; however, § 87(2)(b) denied hearing any sounds of "fighting" or any noise consistent with § 87(2)(b) being pushed against a vehicle. When asked how she knew that the officer pulled § 87(2)(b) from his vehicle, § 87(2)(b) stated that the extent of what she heard during this portion of the interaction was the sound of a door opening, followed by one or two minutes of silence, followed by § 87(2)(b) stating, "Why you have to pull me by my

clothes?” § 87(2)(b) later claimed that § 87(2)(b) stated this immediately upon exiting his vehicle.

§ 87(2)(b) also provided a written statement regarding what she heard during the incident (Board Review 08). This statement is dated “09/23/17,” though § 87(2)(b) stated that she wrote it on both September 23 and 24, 2017. This statement was consistent with § 87(2)(b) providing his driver license before exiting his vehicle, as well as with § 87(2)(b) statement during his verified interview that she did not hear any force being used against § 87(2)(b) and was basing her knowledge in this regard on statements made by § 87(2)(b) during the interaction.

§ 87(2)(g)

**Allegation B – Force: Police Officer Frank Orourke refused to provide his name and shield number to § 87(2)(b)**

**Allegation C – Force: Police Officer John Hansen refused to provide his name and shield number to § 87(2)(b)**

**Allegation D – Police Officer Michael McCarthy refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) stated during his CCRB interview that after he was pulled to the rear of his vehicle, he stated, “I would like to get all three of your names and badge numbers” (Board Review 01).

§ 87(2)(b) was informed that he would receive this information when he was issued the summonses. § 87(2)(b) later specifically addressed this question to an officer identified by the investigation as PO ORourke. At the conclusion of the interaction, § 87(2)(b) asked an officer identified by the investigation as PO McCarthy for his name and shield number as he was walking away after issuing § 87(2)(b) the summonses.

§ 87(2)(b)'s written statement provided to the CCRB only mentions one request for name and shield number addressed to all three officers while positioned at the rear of his vehicle, but was otherwise consistent with his verified statement (Board Review 07).

In her verified interview, § 87(2)(b) stated that she heard § 87(2)(b) ask twice for an officer's shield number (Board Review 06). In contrast to § 87(2)(b) stated that these requests were made while he was still inside his vehicle. § 87(2)(b) written statement was consistent with her CCRB interview (Board Review 08).

PO ORourke stated that he did not recall § 87(2)(b) asking for any officers' name and shield number, and that if he had asked the officers would have provided this information (Board Review 04).

PO McCarthy stated that he did not recall if § 87(2)(b) asked for the officers' names and shield numbers, and stated that he did not hear any officer refuse to provide this information to § 87(2)(b) (Board Review 03). When asked during his CCRB interview whether he provided this information to § 87(2)(b) PO McCarthy replied, "Yes, on the tickets." PO McCarthy stated that he also verbally provided his name to § 87(2)(b) in the course of trying to calm him down during the interaction. PO McCarthy did not recall if he verbally provided his shield number, or if the other officers verbally provided their names or shield numbers information to § 87(2)(b).

PO Hansen's statement was inconsistent with PO McCarthy's, in that PO Hansen stated that no officer voluntarily provided their name or shield number to § 87(2)(b) (Board Review 05). PO Hansen was consistent with PO ORourke and PO McCarthy in stating that § 87(2)(b) did not ask for any officer's name or shield number, and that no officer refused to provide this information to § 87(2)(b) (Board Review 03, 04 and 05).

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**Allegation E – Discourtesy: Police Officer Michael McCarthy acted discourteously toward**

§ 87(2)(b)

It is undisputed that PO McCarthy threw two summonses into § 87(2)(b)'s vehicle.

§ 87(2)(b) stated in his verified interview that after he and the officers returned to their respective vehicles, an officer approached § 87(2)(b)'s vehicle and threw two summonses, as well as § 87(2)(b)'s license and registration, into § 87(2)(b)'s vehicle without attempting to hand them to § 87(2)(b) (Board Review 01). The summonses landed at § 87(2)(b)'s feet, while his license and registration fell on his seat and between the driver and passenger side seats, respectively. The officer's hand broke the threshold of § 87(2)(b)'s vehicle and "grazed" § 87(2)(b)'s cheek as he did this (Board Review 01 and 02). The officer then stated, "Here's your tickets," and walked away (Board Review 01). § 87(2)(b) stated in a phone call following his CCRB interview that he did not know where the other officers were at this time (Board Review 02). § 87(2)(b)'s written statement was consistent with his verified interview (Board Review 07).

§ 87(2)(b) stated in her CCRB interview that she was not on the phone with § 87(2)(b) when he was issued the summonses for his tinted windows (Board Review 06). § 87(2)(b)'s written statement provided to the CCRB was consistent with this (Board Review 08).

PO McCarthy stated that after writing two summonses for § 87(2)(b) he approached § 87(2)(b)'s vehicle and stated, "You're being issued two summonses in regards to your tinted windows" (Board Review 03). PO McCarthy held the summonses at § 87(2)(b)'s window for an amount of time that he described as "reasonable," but for which he could not provide an estimate. After § 87(2)(b) did not take the tickets, PO McCarthy threw the summonses onto § 87(2)(b)'s dashboard. PO McCarthy denied making physical contact with § 87(2)(b) as he did this. § 87(2)(b) then stated, "Fuck you," to which PO McCarthy replied, "Have a nice day."

Both PO ORourke and PO Hansen stated that they were unable to clearly see PO McCarthy issue the summonses to § 87(2)(b) because they were sitting in their vehicle (Board Review 04 and Board Review 05). Both officers denied seeing PO McCarthy throw the summonses into § 87(2)(b)'s vehicle, and did not hear any statements made during this interaction.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b)
- PO ORourke has been a member of the NYPD for four years. In that time, he has been the subject of two prior CCRB allegations in two cases, none of which were substantiated. § 87(2)(g)
- PO McCarthy has been a member of the NYPD for six years. In that time, he has been the subject of 14 prior allegations in seven cases.
  - Two allegations contained in CCRB #201501145, for threat of force and discourtesy, were substantiated. The CCRB recommended PO McCarthy receive formalized training regarding these allegations; this recommendation was upheld by the NYPD.
- PO Hansen has been a member of the NYPD for 10 years. In that time, he has been the subject of 23 prior allegations in 11 cases.
  - In CCRB 20130255, PO Hansen was the subject of the following substantiated allegations: Abuse – Frisk, Abuse - Search (of person), and Abuse – Stop. PO Hansen was also cited for failure to prepare a memo book entry and failure to prepare a stop and frisk report. The CCRB recommended PO Hansen receive Command Discipline A with regard to these allegations; this recommendation was upheld by the NYPD.
  - PO Hansen has two prior allegations for refusing to provide his name and shield number, the dispositions of which are noted below:
    - CCRB 201403235: Victim Unavailable
    - CCRB 201610118: Unsubstantiated.

**Mediation, Civil and Criminal Histories**

- The case was determined to be ineligible for mediation because § 87(2)(b) § 87(2)(b) A FOIL request filed with the Office of the New York City Comptroller indicated that as of December 4, 2017, § 87(2)(b) has not filed a Notice of Claim regarding this incident.
- § 87(2)(b), § 87(2)(a) 160.50 § 87(2)(b), § 87(2)(c)

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date